

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISC. APPLICATION NO. 121 OF 2016

GATEWAY INSURANCE COMPANY.....APPELLANT

VERSUS

DAVID NYAGAH MUTURI.....RESPONDENT

RULING

This is an application under Order 50 Rule 6, Order 51 Rule 1 of the Civil Procedure Rules, Sections 3A, 79 and 95 of the Civil Procedure Act, for leave to enlarge time to file a memorandum of appeal following a ruling by the lower court. The reasons for the application appear on the face of the application which is also supported by an affidavit annexed thereto. The application is opposed and there is a replying affidavit sworn by the advocate for the respondent.

The applicant has the right of appeal following the ruling of the lower court. The said ruling was said to have been delivered without notice to the parties. It is also alleged that the lower court file was missing when the applicant was pursuing the proceedings and the ruling. This of course has been disputed by the respondent.

I have looked at the memorandum of appeal and the same cannot be said to be frivolous. Granted that the respondent has a judgment in his favour, but also that the applicant has the right to exhaust all avenues provided by law, taking into consideration the facts available and to secure the rights of both parties, I allow the application on the following terms.

Leave is hereby granted to file the memorandum of appeal out of time. The record of appeal shall be filed within 30 days from today. In the meantime, the decretal sum shall be deposited in an interest earning account in the names of advocates of both parties within 30 days from today pending the hearing and determination of appeal.

Costs in the cause.

Dated, signed and delivered at Nairobi this 11th Day of November, 2016.

A. MBOGHOLI MSAGHA

JUDGE